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GENERAL GUIDELINES FOR THE PREPARATION OF ENVIRONMENTAL ASSESSMENTS

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Ministry
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NOTE

WHILE THESE GUIDELINES INTERPRET THE LEGAL
FRAMEWORK OF ENVIRONMENTAL ASSESSMENT, THEY
ARE PURELY ADVISORY, AND IN THE CASE OF ANY
CONFLICT OR DOUBT, THE WORDING OF THE
ENVIRONMENTAL ASSESSMENT ACT AND THE
REGULATIONS MADE UNDER ITS AUTHORITY WILL
PREVAIL.

INTRODUCTION

These Guidelines explain the terms and requirements of The Environmental Assessment Act, 1975, and are intended to assist proponents and others involved in the planning process leading to the preparation and submission of an environmental assessment to the Minister of the Environment.

Part I gives an overview of environmental assessment, set within the context of The Environmental Assessment Act. A diagram showing an approach to environmental planning is presented and described.

Part II is devoted to a detailed discussion of the required content of an environmental assessment document, based on the provisions of Section 5(3) of The Environmental Assessment Act.

Part III deals with public participation.

Part IV describes how the document, once submitted, is dealt with under the Act.

The Appendix includes the text of The Environmental Assessment Act, and flow diagrams showing how an environmental assessment is dealt with under the Act.

The Guidelines should not be regarded as a model to be followed implicitly step-by-step. The Guidelines deliberately avoid the "cookbook" or "checklist" approach, to allow the proponent to have maximum flexibility, while at the same time meeting the requirements of the Act.

These Guidelines will be updated and revised on a regular basis as experience is gained with the administration of The Environmental Assessment Act. Suggestions for revisions and clarification are welcomed by the Ministry of the Environment, and should be directed to Mr. V.W. Rudik, Assistant Director, Environmental Approvals Branch, 135 St. Clair Ave. W., Toronto M4V 1P5.

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PART I - AN OVERVIEW OF ENVIRONMENTAL ASSESSMENT

1. The Environmental Assessment Act and its Objectives

The Environmental Assessment Act, S.O. 1975, c.69, received Third Reading in the Ontario Legislature on July 14, 1975, and Royal Assent on July 18, 1975. It provides for an assessment of the potential effects on the environment of a proposal and its alternatives. "Environment" is defined in very broad terms (see p.8).

The Act has been in force for undertakings of the Ontario Government, municipalities and public bodies since October 20, 1976, and for those of the private sector since January 16, 1977. However, while environmental assessments must be prepared for all public undertakings (unless exempted), the reverse is the case for the private sector: only those undertakings specifically or generically defined and designated by Regulations are subject to the Act's provisions. Regulations and exemptions are published in the Ontario Gazette and in a Ministry of the Environment newsletter, EA Update.

The Environmental Assessment Act provides for the approval of an undertaking which is subject to the Act, based upon a government review of a document called an environmental assessment, which the proponent has prepared and submitted to the Minister of the Environment. In the environmental assessment, the proponent shows that the environmental effects of various alternative courses of action were identified and evaluated, before one of them was selected. This preferred alternative is put forward as the undertaking. The word "undertaking" is defined in Section 1(o) of the Act; it need not necessarily be of a physical nature; (see p. 15). It should be emphasized that assessment of environmental effects is not something which should begin after a proponent has decided upon the project with which he wishes to proceed, but rather something which should take place as part of the process of arriving at that project decision.

Section 5(3) of The Environmental Assessment Act sets out the required general content of an environmental assessment. A proponent must give a description of the purpose of the proposed undertaking and a description and evaluation of the environmental effects caused by both the undertaking and alternatives. The statement of rationale for the undertaking (as required by Section 5(3)(b) of The Environmental Assessment Act), is the proponent's summary of the environmental assessment, in which the argument in favour of the proposed undertaking is put forward. By also describing and stating the rationale for the alternatives, the proponent shows that the probable environmental effects of the alternatives were considered in evaluating them and choosing the proposed undertaking from amongst them.

By this means, the proponent is required to consider a full range of environmental consequences, rather than simply the technical and economic feasibility, at all levels of the process leading up to the selection of a preferred alternative.

When carrying out the study and preparing the environmental assessment, the proponent is likely to find it advantageous to consult the Ministry of the Environment.

2. The Definition of the Environment

A broad definition of "environment" is set out in Section 1(c) of the Act, as follows:

- " (i) air, land or water,
(ii) plant and animal life, including man,
(iii) the social, economic and cultural conditions that influence the life of man or a community,
(iv) any building, structure, machine or other device or thing made by man,
(v) any solid, liquid, gas, odour, heat, sound, vibration or radiation resulting directly or indirectly from the activities of man, or
(vi) any part or combination of the foregoing and the inter-relationships between any two or more of them,
in or of Ontario".

As can be seen, it includes not only the natural environment but also human beings as part of the environment. This means that an environmental assessment will take into account also social, cultural and economic factors. This broad definition of the environment must be kept in mind when reading these Guidelines, and when preparing an environmental assessment.

3. An Environmental Assessment Process

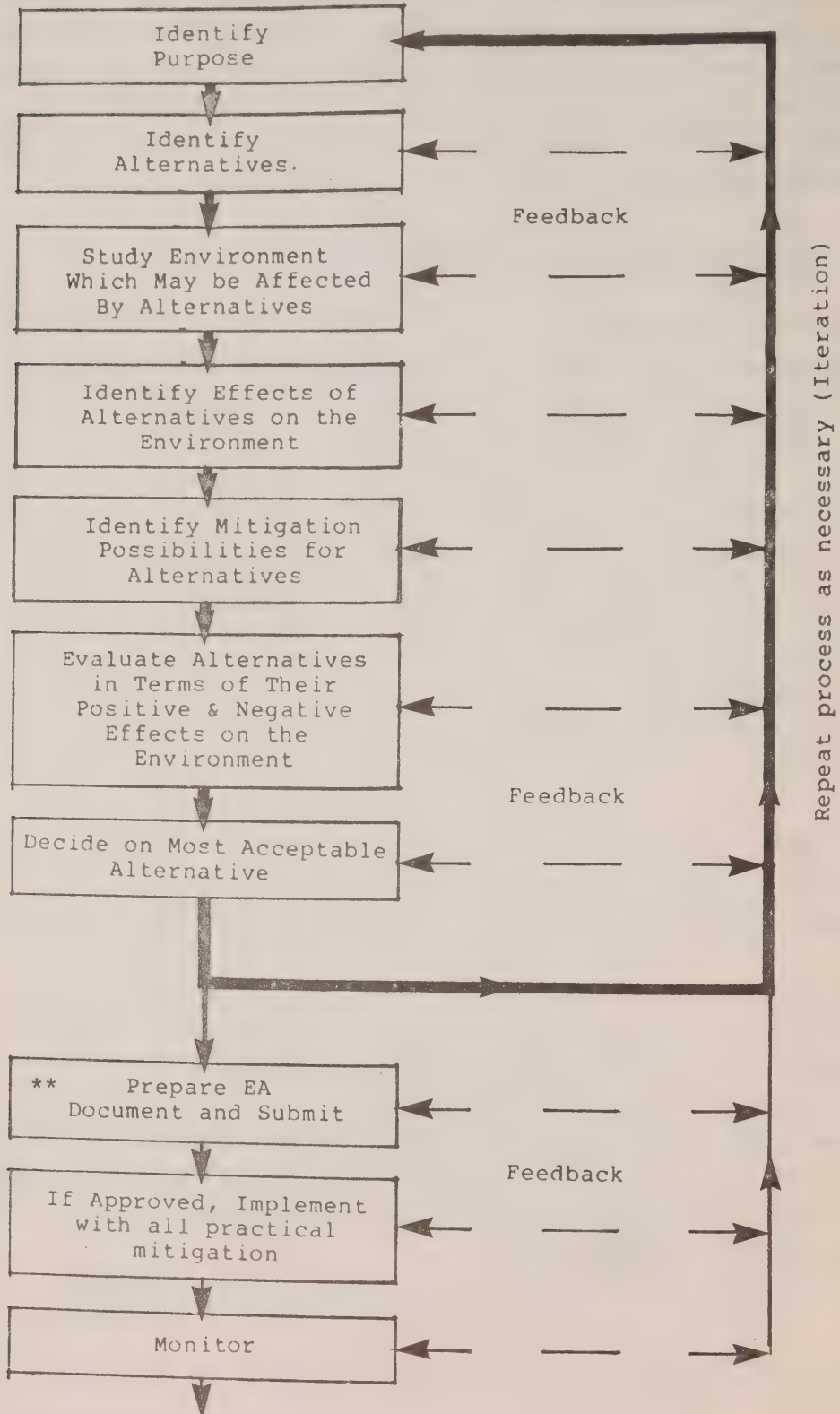
It is not the purpose of the Act, nor of these Guidelines, to suggest any rigid framework for the planning process leading to the selection of the preferred alternative. However, Figure 1 (p.10) shows diagrammatically a planning process which incorporates environmental considerations. Such a process is based upon the continued narrowing-down of the field of alternatives. It will of course be realized that in practice planning may not take the linear form shown in Figure 1, or prove to be a regular progression through neatly defined stages. There should be constant feedback during planning, so that earlier decisions may be re-evaluated, if necessary, in the light of later findings, and so that flexibility among options may be retained as long as possible.

In complex situations, the steps shown in Figure 1 may be repeated (iterated) several times during the course of the study, prior to the submission of the environmental assessment.

The steps of the environmental planning diagram are set out below in the order in which they appear in Figure 1, with a short description for each. At the end of each of these descriptions, a reference is given to later pages of these Guidelines where the matter is more fully discussed (mainly in Part II). In addition, the Appendix contains a list of some of the environmental factors which may be considered at all stages of the environmental study.

FIG. 1 A DIAGRAM OF AN ENVIRONMENTAL PLANNING PROCESS

(For discussion of this diagram, see pages 9-13)



** At final stage of study process

Identify Purpose

The proponent wishes to solve or alleviate a particular problem or to take advantage of an opportunity. The proponent's objectives may indeed change as investigation of the subject proceeds and perceptions are developed (see pp.19-21).

Identify Alternatives

All reasonable alternative ways for the objectives to be achieved should be identified, researched and evaluated. The alternatives may be "structural" or "non-structural". One of these alternatives will emerge at the end of the planning process as the preferred alternative (see pp.21-23)

Study Environment Which May Be Affected By Alternatives

Consistent with the broad definition of the environment in the Act, data should be collected on environmental components which may be affected directly or indirectly by the alternatives. This inventory of data to be compiled will vary in amount, detail and type depending on the alternatives under consideration, and how far the study has advanced. In order that the data collected should be relevant, the proponent should keep in mind its ultimate use, as the basis for analysing expected effects and identifying potential trade-offs (see pp.24-26).

Predict Potential Effects

The effects, both positive and negative, on the environment of implementing each alternative should be predicted. This analysis should be conducted at each stage of the study (see pp.26-27)

Identify Mitigation Possibilities

The possibilities for mitigation of potential adverse effects should be identified for each alternative, so that they may

play their part in the "trade-off" process outlined earlier (see pp.27-29).

Evaluate Alternatives

An examination of the predicted effects, and reasonable possibilities for the mitigation of the adverse effects of each alternative, will enable the proponent to evaluate and compare the alternatives in terms of their positive and negative effects on the environment. This process sets the scene for the "trade-offs" which must now be made in order to arrive at the most acceptable alternative. Public involvement is of particular importance at this trade-off stage (see pp.29).

Decide on Most Acceptable Alternative

As a result of the previous steps, the proponent can now make a decision as to the most acceptable alternative(s) at that stage of the study, which will be further studied in the next stage of the study. If the final stage has been reached, the most acceptable alternative will be put forward as the "undertaking", to be described in the document and submitted under the Act. (see p.29).

Prepare E.A. Document and Submit

The proponent prepares, and submits to the Minister of the Environment, the environmental assessment document which describes the undertaking, the steps by which the proponent arrived at it, and why it is the proponent's preferred alternative.

The review and approval process required by the Act now begins. It leads to a decision on whether to approve the undertaking, by either the Minister of the Environment (with the approval of Cabinet) or the Environmental Assessment Board. The review and approval process is dealt with in detail in Part IV, and shown on flow charts in The Appendix.

Implement with Mitigation

On receipt of approval, including any conditions, of the undertaking under The Environmental Assessment Act, the proponent may then seek any other approvals which may be required under other provincial statutes. Section 6 of The Environmental Assessment Act prohibits the granting of such subsequent approvals, licences, etc. until an approval is granted under The Environmental Assessment Act. However, the applications for such other approvals may be made concurrently with the application under The Environmental Assessment Act in order to avoid delay.

Once the final design has been completed and agreed upon, the proponent proceeds with implementation.

Mitigation measures employed during the construction, operation and maintenance of the facilities will further reduce adverse effects of the approved undertaking. These measures will already have been outlined in the environmental assessment document and/or conditions of approval (see pp.27-29).

Monitor

Monitoring of the undertaking takes place both during and after implementation, to ensure that the terms of approval are being complied with, and so that future studies may benefit from the experience gained. Provisions for monitoring may be included by the proponent in the environmental assessment document, or form the subject of conditions of approval of the undertaking (see pp.27-29).

4. Methodologies

Many different methodologies have been developed for environmental studies, by means of which various alternatives may be compared, and the preferred alternative selected. Since each project is unique, the methodology most appropriate to the

project should be chosen. The Ministry has therefore steered away from advocating specific methodologies.

The environmental assessment should contain a clear explanation of the methodology which has been followed. Certain assumptions and subjective judgements are an inevitable part of all studies; the proponent should be aware of these and state what they are. An acceptable methodology or combination of methodologies should allow for an adequate analysis of the environment, the alternatives, the potential environmental effects, and mitigation measures; it should provide for comparisons, evaluations and trade-offs.

5. Public Participation

During the planning process culminating in the preparation of the environmental assessment document, the proponent is strongly advised to involve the public. The matter is discussed in more detail in Part III of these guidelines. (see pp.31-32)

PART II - THE CONTENT OF AN ENVIRONMENTAL ASSESSMENT DOCUMENT

This part of the Guidelines discusses what an environmental assessment document submitted under the Act should contain. It is largely structured upon Section 5(3) of The Environmental Assessment Act.

1. The Undertaking

a) General

The "undertaking", (see Section 1(o) of the Act) is defined as an "enterprise or activity or a proposal, plan or program...". In plain terms, it is whatever the proponent is asking approval for, as described in the environmental assessment document.

An undertaking may be in the form of a physical project, such as a road or electric generating station, or be more abstract such as a plan, program or activity.

An undertaking may involve either a single project or activity, or several of them: these may be similar or dissimilar in nature. An example of similar projects within one undertaking might be where two separate but associated highways were dealt with at the same time. Alternatively two dissimilar projects or activities, such as a dam for flood control purposes and downstream channelization and bank stabilization works associated with it, could be dealt with as one undertaking.

b) "Specific" v. "Class" Undertakings

Undertakings can be put forward on either a "Specific" (sometimes termed an "individual") or on a "Class" basis.

A "Specific" undertaking is one put forward by the proponent based on a decision-making process which has already been

carried out; the environmental assessment document contains a description of that process. Most environmental assessments are likely to fall into this category.

A "Class" undertaking is one in which the proponent asks for approval of the undertaking, based on a decision-making process which he describes now, but which he proposes to carry out in the future.

The fundamental difference between the two types of undertakings is therefore this: a "Specific" undertaking is one in which the time when and the place where it is to be carried out are specified in the environmental assessment; a "Class" undertaking is not specific as to time and place.

c) "Class" Undertakings

The use of Class Environmental Assessments is a method of dealing with certain types of projects which have important characteristics in common. Such projects are relatively small in scale, recur frequently, and have a generally predictable range of effects which, though significant enough to require environmental assessment, are likely to cause relatively minor effects in most cases. Examples are: electric transformer stations and sub-stations, highway widenings, moderate-sized extensions to sewage treatment plants, and communications towers.

The Environmental Assessment Act, by allowing flexibility in the way an undertaking is defined, makes it possible to deal with such projects without the necessity of passing each individual project through the formal review and decision-making procedure under the Act, provided that an acceptable planning process is followed. However, the proponent must justify, in the Class E.A. document, the choice and process of the Class E.A. approach.

Projects satisfying the criteria outlined above may be grouped together into a "class". A single formal

environmental assessment document is prepared for the class, rather than for each individual project. The class of projects as a whole is therefore the "undertaking" under The Environmental Assessment Act. For example, an undertaking might be described in terms such as: "highway widenings", or "the activity of highway widening". The idea is to seek approval now for a type of project or activity which will be planned and carried out, in a prescribed fashion, at a time and place to be decided upon by the proponent in the future.

The Class E.A., then, describes the planning process to satisfy the requirements of the Act which the proponent proposes to follow, each time a project within that class is undertaken in the future.

The Class E.A. document is submitted and processed like any other E.A.; this includes the possibility of a hearing before the Environmental Assessment Board. In fact, a Class E.A. may sometimes, at the discretion of the Board, involve hearings being held in several places across the province. This is because individual projects within that class may be carried out in many different places, and the public should be afforded adequate opportunity to participate.

Once the undertaking dealt with in the class document has been approved, and provided that the proponent complies with the approval and any terms and conditions specified in it, projects falling within the class can proceed from planning through implementation, with no further formal applications required under The Environmental Assessment Act.

The Class E.A. document should outline in general terms a common set of procedures for the planning, design and implementation of the project type. It should also describe, in general terms, the alternatives, and the types of effects which are likely to occur, and how each of these will be dealt with for individual projects within the class. The means of ensuring public access to, and participation

in, the process should also be stated.

The document should describe the characteristics, (e.g., maximum or minimum size, specified standard designs, etc.), of projects which are to be included in that particular class. The proponent must therefore explain the method by which he will "test" a project at various stages of the environmental assessment study process, to see whether it still conforms to the description of the class as approved. If it does not conform it will be dealt with by other means, e.g., a different Class E.A., or a Specific E.A.; or perhaps it is not significant enough to be subject to the Act.

The proponent should provide for the "elevation" or "bumping-up" of a particular project from the Class E.A. category to that of a "Specific" environmental assessment. The document should explain in what circumstances this would occur and how it would be done. It might occur, for instance, if a particular project appeared to involve severe adverse environmental effects (natural or social), and/or significant public controversy seemed a likelihood. The procedure and responsibility for determining whether such circumstances exist should be set out in the Class E.A.

The class document represents a commitment by the proponent to the government and the public to follow the environmental planning process described in it, each time a project within that class is undertaken. For each project, the proponent will produce a study report; the class document should outline what subjects the study report will cover. The report when complete will be sent to the Ministry of the Environment for information and monitoring purposes. Indeed, it is suggested that the report used for this purpose should be the document used by the proponent as the basis for the decision to proceed with the project, provided that it also contains the information to satisfy Class E.A. requirements. In this way, the natural environment, and social, economic and technical concerns are likely to be most effectively integrated, and internalized in the

proponent's decision-making process.

The foregoing is a general introduction to the concepts of class undertakings and class environmental assessments. Further discussion of the class approach appears at the end of each of the following sections of this portion (Part II) of these Guidelines.

2. Description of the Undertaking

The description should outline the features of the undertaking and alternatives to an extent suited to their significance in the study. It should be borne in mind that the undertaking is simply that alternative which the proponent considers the most acceptable, and is not determined until after the evaluation stage of planning. Nevertheless, it is likely to be more fully described in the document than the other alternatives.

The description might include: location, dimensions, construction, operation, abandonment, industrial processes involved, raw material required (and its sources), by-products, fuels, emissions and effluents, supportive services required (e.g., sewers, water supply, electricity, educational and social services), products produced or services provided, scale of employment, and period of time involved for construction and operation.

For a Class E.A. document, the description should set out, very clearly, what will be the range of characteristics of projects covered by the class; this could include examples of typical situations. This description might also be used as one of the ways by which a project can be "tested", to see whether it conforms to the class (see p.18).

3. Purpose of the Undertaking

Section 5(3) requires "a description of the purpose of the undertaking;".

This description should state what the proponent wishes to achieve by carrying out the undertaking. This may be stated in terms of the intended effect on society, the particular problem which is to be solved or alleviated, or the opportunity which is to be pursued (e.g., a business opportunity). The means by which the desired end is to be achieved should not be specified in the description of purpose.

In Class E.A. documents, the description of the purpose of the undertaking will be in more general terms than that given for an environmental assessment of a Specific project. It should also be noted that projects which fall within the same class may sometimes fulfill different purposes. For example, small control gate dams may be designed for a variety or combination of purposes such as flood control, provision of recreational opportunities, or potable water supply.

The question is often asked as to whether a particular project is "needed" or not. The word "need" does not appear in The Environmental Assessment Act, but perhaps is best associated with "purpose", since in order to fulfill the purpose, the undertaking could be said to be "needed".

"Need" is a relative term, and therefore the question as to whether an undertaking is "needed" is also a relative one: it depends upon certain assumptions, and who is making them. In other words, if certain assumptions are taken as given, then a particular course of action may be "needed".

As a simple example, if one wished today to go from Toronto to Montreal in one hour, one would need to take an airplane (i.e., no other means would suffice). The point is that the "need" for a plane is dependent on there being only one hour available for the journey. However, if there were half a day in which to make the journey, several other alternatives might also be possible. There is also an implicit assumption that one is willing - and able - to pay the "cost" (financial, environmental and other) of such a journey.

The same types of considerations would apply to undertakings under The Environmental Assessment Act. One could only answer the question, in advance of an environmental assessment, as to whether a particular project were "needed", if many basic assumptions or decisions had already been made. Yet many of these basic assumptions would themselves be matters for discussion and resolution through the environmental assessment process, since environmental effects (broadly defined) - and "costs" - are the inevitable result of any undertaking. The "need" for an undertaking cannot be established without taking into account the consequences of the action which is being suggested.

"Need", then, should be viewed as a relative concept, which can only be fully established through the full process of comparison and evaluation of the advantages and disadvantages of the available alternatives.

4. Description of Alternatives

In the course of the study process, the proponent should examine and compare reasonable alternative ways of achieving the stated purpose, and describe them in the document.

The proponent may compare many different types of alternatives; these might be both "structural" and "non-structural" in nature. For instance, a transportation problem might be solved by building a road or railway or airport, (i.e., "structural" alternatives). "Non-structural" alternatives might include economic incentives or disincentives, changes in the organization of an institution (e.g., a transit commission), or changes in the traffic control systems on a given highway. What the effect would be of not providing a solution (the "do-nothing" alternative) should also be discussed. There are also intermediate courses of action, such as partial fulfillment of the objectives, or postponement or phasing of the undertaking.

All this, of course, does not represent any basically new process for the proponent; it simply makes an explicit formal

process of what has often been an implicit, informal process, with unspoken assumptions, and trade-offs.

The Act distinguishes between "the alternative methods of carrying out the undertaking" and "the alternatives to the undertaking". No hard and fast line can be drawn in the study process between the two types of alternatives, but categorizing them in this way may help the proponent to organize the documentation of his study. To take the previous example, say the proponent eventually decides to make a submission under the Act with a new road as the undertaking, the other alternatives mentioned above (railway, air service, economic incentives, etc.) would be the "alternatives to". "Alternative methods ..." would comprise a detailed consideration of the various ways of handling the preferred alternative of a new road - e.g., alternative locations for the road, different types of roads, different construction techniques, etc.

Some alternatives will be examined in less detail than others, because a short study may reveal that they are unsuitable for some basic reason, and they will be eliminated early in the process. Other alternatives may "survive" to a much later stage in the process. All this should be documented, and will reflect the degree of detail with which the alternatives are described. The Ministry of the Environment does not encourage proponents to carry alternatives to subsequent stages of the study, once reasonable grounds for discarding them have been identified.

The question arises as to how far afield the proponent should go in his search for and analysis of alternatives; this will depend on the nature and responsibilities of the proponent and the context of the proposed undertaking. In the course of the study, an alternative may be identified which appears viable, yet is not within the proponent's sphere of responsibility or capability. For instance, one government agency may find that the mandate for carrying out that particular alternative would lie with another agency or level of government. In such circumstances, it would be reasonable to expect the proponent government agency to seriously consider that alternative in its

environmental study. However, it would probably often be unreasonable to expect the same from the private sector. For example, a private proponent could hardly be expected to identify and evaluate an option available only to a competitor.

But no firm line can be drawn between the responsibilities of the public and private sector. In another example, a private proponent proposing to exploit a publicly owned natural resource might reasonably be required to demonstrate why the proposal is preferable to alternatives available to the public sector or advanced by other private proponents. Alternatives considered, therefore, should be those which are reasonable in the circumstances, and the environmental assessment document should adequately explain both reasoning and circumstances.

With regard to a Class E.A., the proponent should explain how the various alternatives will be identified when particular projects are planned. The document should also describe the range of possible alternatives, giving examples. It should include the "no-go" alternative, and technologies or physical alternatives from which the final undertaking could be chosen.

5. Statement of the Rationale

Section 5(3) of the Act requires a statement of the rationale for the undertaking and the alternatives. The statement of the rationale for the undertaking will therefore set out the proponent's conclusions based upon the findings of the study, as reflected in the environmental assessment document. The proponent is saying, so to speak, "in the light of the study which I have undertaken, and which is documented here, I think that I have made the case for the proposed undertaking being the most desirable course of action, in terms of a balance sheet which I have drawn up of positive and negative effects on the environment." It will be a summary argument by the proponent in favour of the undertaking. It will highlight the major findings and conclusions of the study, and explain why the other alternatives are less acceptable.

The proponent is required to state what was the rationale for the various other alternatives considered in the course of the environmental assessment study. The proponent should also explain how far the undertaking, and each alternative, will fulfill the purpose.

In a Class E.A. document, the proponent should explain why the Class E.A. approach was chosen, and how it was decided what projects should be included in that particular class. The proponent should make a convincing case that adherence to the planning process described in the Class E.A. document will adequately achieve the purposes of The Environmental Assessment Act.

6. Description of the Environment Affected

Section 5(3)(c) of the Act requires a description of the environment that would be or might be affected directly or indirectly by the proposed undertaking or its alternatives; and of the actions necessary to prevent, change, mitigate or remedy those effects.

Section 1(c) of the Act defines "environment" in very broad terms. It includes not only the natural environment of air, land, water, plants and animals, but also humanity within it. This includes human products, the results of human activities, and the social, economic and cultural conditions that influence human beings. In order to take account of interrelationships between components of the environment, the study and description of ecological, and social, cultural and economic systems is necessary.

Consideration of the environment potentially affected by each "surviving" alternative must take into account both time and space. The time dimension of each alternative under

consideration begins when it is started, continues through its active life, and may extend past retirement or abandonment. The fact that the environment itself is dynamic, and will change and evolve even without the interference of man, should be considered.

The spatial dimension concerns the "Study Area", which is "the environment ... affected, directly or indirectly"; therefore, the basis for defining the Study Area and determining its boundaries must be explained. The Study Area will not necessarily be identical for all elements of the environment described in the document. For example, the areas where the social and cultural effects of a proposal may be felt may well be different from, and more widespread than, those where the natural environment is affected.

In collecting data, the proponent should concentrate on information which is likely to be of key significance within the environmental systems (e.g., ecosystems, social systems) of the Study Area. The data base need contain only that amount of information required by the stage reached in the study process, and which will allow significant environmental effects to be elucidated. For example, at an early stage of the study perhaps only very general data may be required in order to eliminate certain alternatives from further consideration. This general level of data is not likely to be sufficient to make the comparison for final selection of an alternative.

The Class E.A. document should explain what sort of information will be collected and how it will be collected and used. Since projects within a Class E.A. may be sited in very different surroundings, the environment can only be described in general terms; sample descriptions could be given of the most likely environments in which the projects would be sited. More detail can be provided where Class E.A.s deal with types of projects which are always sited in environmentally similar areas.

When planning projects within the class, the proponent must show how key components of the environment will be identified. The

proponent should be able to indicate, with levels of detail varying according to the situation, what the key components are likely to be, and how they will be tested to see if they are significant for each project.

7. Description of Environmental Effects

Section 5(3) of the Act refers to both direct and indirect effects on the environment; it should be remembered that these effects may be beneficial as well as adverse. No hard and fast line can - or should - be drawn between "direct" and "indirect" effects, but the following discussion may prove helpful.

Direct effects are caused by the building and operation of the undertaking itself. They are generally the immediate physical effects and direct alterations to the environment (as defined in the Act, and therefore including social and economic factors) and its components and systems.

Indirect effects are "induced" or stimulated by the undertaking, or by the other alternatives being examined.

Let us take the example of a thermal electric generating station. The taking up of cooling water from a lake, and its later discharge back into the lake, may cause direct adverse effects to the water quality and the local fish population. On the other hand, availability of electric power would be an effect which is beneficial to society. Perhaps the effects on the local fish population would destroy an established sport fishery, which would adversely affect the livelihood of local people in the tourist industry; this would be an indirect effect. A different type of indirect effect might be the induced secondary development required in connection with the generating station, such as housing, schools, shops, roads, and sewer and water servicing schemes, and the associated population to serve new operating personnel and their families.

Where the undertaking is of a non-physical, "abstract" kind (see p.15), such as a plan or program, it is even more difficult to differentiate between direct and indirect effects.

The analysis of the effects should take account of the location, size or phasing of the proposal. The duration of effects should be stated; there should be a prediction of short- and long-term effects. This should cover all phases of the project, including construction, operation and maintenance, and abandonment (or "decommissioning"). The residual effects after decommissioning of some undertakings, even when all mitigation procedures have been carried out, can be very significant. Cumulative effects and possible accidents should also be considered.

The document should indicate which effects are temporary and which are irreversible, and which adverse effects may, with time or effort, be modified or reversed. In considering the effects of the alternative proposals, the proponent should take into account the significance of these effects on the natural or social systems of which they form a part.

The level of detail to which the prediction of effects should be taken will depend on the severity of those effects, their significance for the decision in question, and what stage in the decision-making process is being considered.

The Class E.A. document should describe how the proponent will in the future identify the specific effects and degree of impact, for each project within the class. The effects will vary in type and magnitude depending on the situation. To the extent practicable on a generalized basis, the document should set out the range and intensity of effects normally associated with projects within the class; typical examples could be given. It should be made clear that potential adverse effects greater than these "norms" would be grounds for "bumping up" a project to Specific E.A. status (see p.18).

8. Mitigation and Monitoring

The proponent must describe how the adverse effects on the environment of the undertaking and alternatives may be lessened, prevented or remedied. This may be by both physical or non-physical means (e.g., by entering into agreement with the

affected municipality). Mitigation possibilities, and their cost, are one of the factors taken into account during the evaluation phase of the study (see p.29). Mitigation procedures may themselves have adverse effects, which should also be identified.

Both mitigation of adverse effects on the environment, and monitoring of the undertaking during construction (and sometimes) operation, should be described by the proponent in the environmental assessment document. They may also be the subject of conditions of approval under the Act. The proponent may be only partly responsible for carrying out the monitoring. The Ministry of the Environment and other agencies will also be involved, in order to ensure that the proponent lives up to the commitments made in the environmental assessment document, and/or the conditions of approval.

Monitoring of the project after construction will be done in order to consider whether the undertaking has been carried out as approved, and to ascertain the accuracy of the effects predictions in the environmental assessment. It will also provide documentation, for use in future studies, of the environmental changes caused by the introduction of the undertaking. Such monitoring activities may be wholly or partly the responsibility of the proponent or government agencies, depending on the particular circumstances.

With regard to a class undertaking, the appropriate degree of mitigation will vary from project to project. The Class E.A. should therefore describe the method of making these decisions. Examples of the type of mitigation measures appropriate to projects within the class should also be given. This could be in the form of a construction practices manual, outlining examples of recurring environmental effects and the range of mitigation measures which could be employed.

A Class E.A. should describe in general terms the procedures for monitoring projects within the class. The study report for each project within the class (see p. 18) will contain a specific

description of proposed monitoring measures. The Class E.A. should also outline how the overall requirements of the Class E.A. will be monitored and updated in the light of experience.

9. Evaluation of Advantages and Disadvantages

The document should describe the evaluation process. This examines and compares all the information previously obtained, with a view to singling out the most acceptable alternative, in the proponent's opinion. This is put forward as the undertaking. The evaluation is a trade-off process in which the advantages and disadvantages of alternative courses of action are weighed in terms of their effects, both beneficial and adverse, on the environment. The trade-offs which lead to the final recommendation may present difficult choices. For example, the undertaking may cause mainly adverse effects on the natural environment, yet have mainly positive effects from an economic point of view.

The possibilities available for mitigating the adverse effects of any particular alternative can play a significant part in the evaluation process. This might be the factor which swings the final recommendation towards that alternative, rather than towards another alternative which seems generally more suitable from other points of view.

The methodology used for evaluation should be fully explained in the document to allow the reviewer of the environmental assessment to trace each step of the process.

With regard to class undertakings, the proponent must prepare a clear and complete description in the document of the method which will be used to carry out the evaluation of the alternatives, and to select the undertaking.

PART III - PUBLIC PARTICIPATION

The early involvement of the public in decisions which affect its interests, is increasingly becoming recognized as a citizen right in a democratic society. It has an important role to play in the process of community and citizen development, and as a means to a more equitable and effective policy planning process.

During the planning process culminating in the preparation of the environmental assessment document, the proponent is strongly advised to involve the public, even though public participation at this stage of the process is not a formal legal requirement of the Act. It can be of great assistance to the proponent in preparing the environmental assessment document, and in facilitating its passage through the review process and public hearings (if held) of the Environmental Assessment Board. The proponent is likely to be on firmer ground if evidence can be presented of previous consultation with those likely to be affected by the undertaking or its alternatives.

Such public involvement can identify background information and local perspectives possibly previously unknown to the proponent, and can provide data on public goals, attitudes and values. Public participation early in the planning process may highlight areas of public concern, perhaps thereby helping to avoid confrontation between proponent and public, and consequent delay of the proposal. The public may also put forward alternative solutions to problems, which otherwise would not have been perceived.

The public also has several opportunities, formally under the Act, to require the Minister to have hearings held by the Environmental Assessment Board (see p. 38).

With regard to class undertakings, the proponent should outline, in the Class E.A. document, the mandatory and discretionary opportunities which will be provided for public participation as an integral part of decision-making for each project within the class.

The proponent should remember that although many future projects may be included within one Class E.A. approval, a public hearing on the Class E.A. itself (if held) before the Environmental Assessment Board may take place only once, i.e., at the time the Class E.A. is being considered for approval. It is therefore very important that the procedure for public involvement in the planning process of the various projects under the terms of the Class E.A., be clearly set out.

The Class E.A. should also describe the criteria and procedures by which the proponent or the public may require a "Specific" environmental assessment to be prepared for a particular project within the class (i.e., "bumping it up" it from the class - see p.18).

PART IV - THE DECISION-MAKING PROCEDURE OF THE ENVIRONMENTAL ASSESSMENT ACT

1. Introduction

After the environmental assessment document has been submitted to the Ministry of the Environment, what happens? Plates I and II (Appendix B) are flow diagrams showing the main steps of The Environmental Assessment Act process for dealing with such a document. The diagrams should be read in conjunction with the Act; Plate II has references to relevant sections of the Act in each box.

The diagrams illustrate all possible situations that may occur in the application of the Act; obviously therefore, no one environmental assessment document will pass through all the steps shown there. Once submitted to the Ministry of the Environment, the three basic alternative routes for an environmental assessment document to take are shown in both Plates in red, green and blue (see pp.35-37).

2. Applicability of the Act

At time of writing (July 1978), the Act applies to all undertakings of the Ontario Government, its agencies, and conservation authorities, unless they have been exempted by Regulation or Exemption Order. A draft Regulation is currently being discussed with the municipalities with a view bringing significant municipal projects under the provisions of the Act. With regard to the "private sector", the Act applies only to those projects which are specifically designated by Regulation.

Prospective proponents should consult the Ministry of the Environment and Regulations and Exemption Orders to ascertain whether their proposals are subject to the Act. The proponent would also be wise to consult the Ministry of the Environment in the course of the planning process, and the preparation of the environmental assessment document. When the potential exists for many Specific undertakings of a similar type being submit-

ted, (e.g., electric transmission lines), the Ministry may prepare "generic" guidelines to assist the proponent in preparing environmental assessments. These will subsequently be published in EA Update, thereby providing an ongoing compilation. Whether or not generic guidelines are available, the proponent is advised to consult the Ministry of the Environment on the study design for a Specific undertaking.

3. Review of the Environmental Assessment

When an Environmental Assessment document is filed with the Minister of the Environment, the Minister arranges for a review of it to be prepared. Other interested Ontario Ministries or agencies are asked to participate in the review of the environmental assessment documents, and to make comments and recommendations. The Ministry of the Environment co-ordinates this review. On occasion, conflicts may arise between the positions of the different ministries or agencies; those that cannot be resolved at staff level may be dealt with at more senior levels or may be left for the public hearing.

After the review is completed, the Minister of the Environment is required to give notice to the proponent, to any municipality likely to be affected by the undertaking, and to the public, that the environmental assessment and the review are open to public inspection (Section 7(1)). There is then a 30-day minimum period during which anyone may make a submission to the Minister of the Environment, and require a hearing by the Environmental Assessment Board. When a hearing is held, the environmental assessment document and the government review, together with submissions from other interested parties and the public in general, are the main pieces of evidence to be considered before the Board. This ensures that all the data and technical opinions are open and available in advance.

4. Acceptance and Approval

In order to better understand the Flow Diagrams shown on Plates I and II, it is important to realize that the Act sets out two

major decision points:

- . Acceptance, or amendment and acceptance, of the environmental assessment document; and
- . Approval (or not) of an undertaking.

Acceptance of the environmental assessment is dependent on whether it is considered that the information contained in the document submitted is an adequate basis on which to make a decision to approve - or reject - the undertaking. If the environmental assessment has been accepted, the way is clear for the eventual major decision as to whether to approve the undertaking (with or without conditions), or to reject it.

These decisions can be made either by the Minister of the Environment (with Cabinet concurrence where an approval is concerned); or by the Environmental Assessment Board.

5. The Three Decision Routes

As an undertaking passes through the government review process, it may take one of three main routes, shown in colour on the Flow Diagrams (see Plates I and II).

(i) The "Red" Route

If, after publication of the Environmental Assessment and the review, the Minister of the Environment does not consider that a hearing is advisable, and has not received a submission requiring one, the Minister may make the decision regarding the acceptance (or amendment and acceptance) of the Environmental Assessment, and advise interested persons accordingly (Sections 9 and 10(2)). After this point, the proponent and others (see p.38) may require a hearing on the subject of approval (the "Blue" Route). If not, the Minister of the Environment, with the concurrence of Cabinet, will make a decision on approval of the undertaking. The decision

may give approval to proceed with the undertaking, give approval subject to conditions, or refuse approval (Section 14).

If the Minister finds the environmental assessment unacceptable in the form submitted, the Minister may require the proponent to do more research or provide more information. Alternatively, the Minister may propose to amend the environmental assessment document to an acceptable form, i.e., one on which it is possible to make a valid decision. It may well be that the proposed amendment will not be to the liking of the proponent or other concerned persons. Therefore, the proponent or any person who has previously made a submission, has the right at this point to require that the environmental assessment document and the review be the subject of a hearing before the Environmental Assessment Board.

(ii) The "Blue" Route

After the decision to accept (or amend and accept) the environmental assessment has been made, the Minister may send the environmental assessment to the Environmental Assessment Board for a hearing and decision regarding approval. This may be either of the Minister's own volition, or in response to submissions from the proponent or the public requiring a hearing (Section 13).

(iii) The "Green" Route

The Minister may refer the matter to the Environmental Assessment Board for a hearing, and decisions on the acceptability of the environmental assessment and approval of the undertaking. Again, this may be either of the Minister's own volition, or in response to a notice requiring a hearing (Section 12(2)).

There are specified stages in the process when a hearing by the Environmental Assessment Board may be required by means of a notice or submission (see p.38). The Minister of the Environment is at liberty at any stage to refer the matter to the Environmental Assessment Board for the two major decisions referred to above.

Section 7(3) of the Act states that a proponent may withdraw or amend an environmental assessment, at any time prior to the day on which the Minister gives notice that the environmental assessment and review are open to public inspection. After this date, a proponent may withdraw or amend an environmental assessment subject to such terms and conditions as the Minister may impose. This is done solely to discourage frivolous applications under The Environmental Assessment Act, that would incur unwarranted public expenditure in processing the application, and create unjustified public concern.

6. Environmental Assessment Board Hearings

The Environmental Assessment Board may hold hearings into, and decide on, the acceptability of the environmental assessment document, and the approval of the undertaking. Details of the composition of the Board, and of its powers, are set out in Part III of The Environmental Assessment Act. Except for certain very limited exceptions, (Section 19 of the Act), all hearings are open to the public.

Where the Environmental Assessment Board has made a decision regarding the approval of the undertaking, the Minister of the Environment, with Cabinet approval, has 28 days (or longer, see Section 24(1)) to alter that decision. The Minister, with Cabinet approval, may vary it, substitute a different decision, or order a new hearing - for all of which the Minister must give a public notice with reasons. In the event of the Minister and Cabinet not taking any action within that period, the decision of the Board stands.

The following are details as to who may require a hearing of the Environmental Assessment Board, and when this may be done:

- i) the proponent or anyone else, within 30 days (or more if stipulated by the Minister) of the Minister releasing the environmental assessment and official review to the public (Section 7(2)(b)); written submissions may also be made by anyone at this point (Section 7(2)(a));
- ii) the Minister, at any time the Minister considers it advisable, or upon receipt of a notice requiring a hearing (Section 12(2));
- iii) the proponent or anyone who made written submissions under Section 7(2)(a) (see (i) above), where the Minister proposes to amend the environmental assessment. This must be done within 15 days of the Minister giving notice of his proposal to amend the environmental assessment (Section 10 and Section 12(1));
- iv) the proponent or anyone who made written submissions under Section 7(2)(a), (see (i) above), where an environmental assessment has been accepted and no hearing has been held previously. This must be done within 15 days of the Minister giving notice of the acceptance, or amendment and acceptance, of the environmental assessment (Section 13).

Section 12(4) specifies who may be the parties to (i.e., take part in) the proceedings before the Board. They are: the proponent, anyone (other than the Minister of the Environment) who has required the hearing, and any others whom the Board may specify. The Minister is entitled, by counsel or otherwise, to take part in the proceedings before the Board.

7. Conditions of Approval

Approval of an undertaking may be subject to conditions. These might include: reporting to the Ministry of the Environment or other Ministries at certain stages during the construction of the undertaking; requirements regarding mitigation and monitoring of environmental effects; and an expiry date for the approval.

Approval of a class undertaking means approval to proceed with the projects within the class, subject to the procedures outlined in the Class E.A. document, and/or any other conditions attached to the approval. Conditions of approval for class undertakings might include: a requirement that the proponent submit an environmental study report (not a formal environmental assessment) to the Ministry of the Environment for each project; a requirement for monitoring by the proponent or by the Ministry of the Environment; mechanisms for "bumping up" individual projects within the class to Specific environmental assessment status; and an expiry date for the approval, which will allow the proponent, review agencies and the public to re-assess the situation after gaining experience.

8. The Public Record

Once it has been submitted to the Minister of the Environment, an environmental assessment is legally a public document and the public may inspect it. An informal notice of receipt of any environmental assessment will then appear in the next issue of the Ministry of the Environment's newsletter, EA Update.*

* To be placed on the mailing list for EA Update, please write:

EA Update,
Information Services Branch,
Ministry of the Environment,
135 St. Clair Ave. West,
Toronto, Ontario M4V 1P5

Enquiries regarding the editorial content of EA Update should be addressed to:

The Editor,
EA Update,
Environmental Approvals Branch,
Ministry of the Environment,
135 St. Clair Ave. West,
Toronto, Ontario M4V 1P5

After the environmental assessment document has been formally reviewed, the public is advised by notice where the environmental assessment review may be inspected, and is invited to make appropriate submissions (Section 7 of the Act). This notice may take the form of a direct mailing, newspaper advertisement etc., as determined by the Minister. The Ministry has the responsibility for giving the notices.

Section 32 of the Act sets out the documents comprising the Public Record, which must be maintained for every undertaking for which an environmental assessment has been submitted under the Act. The documents include the environmental assessment, the official review, any written submissions, any decisions of the Environmental Assessment Board or of the Minister of the Environment, the various notices and any Order of the Minister under the Act. The Detailed Flow Diagram of The Environmental Assessment Act, attached as Plate II, indicates, with the symbol (R), the main documents contained in the Public Record. A notice given by a proponent that the proponent is amending or withdrawing an environmental assessment will also be public.

Other documents produced during the course of the review and approval process of an undertaking may also be included by the Ministry in the Public Record. Public Record documents will be available at specified locations and will be reproduced, fully or in part, for those desiring it, at cost price. At a minimum, the full Public Record will be publicly available at the Head Office and the appropriate Regional Office of the Ministry of the Environment. In addition, copies of the key documents will be available at the offices of the municipality or municipalities within which the undertaking is situated, and in other locally accessible institutions, such as public libraries, as conditions dictate for any particular undertaking.

After a decision on approval has been made, the documents will continue to remain accessible to the public and to future researchers as a continuing source of data, at the Ministry's Head and appropriate Regional Offices.

9. Document Format

Although the proponent is not required to follow any standard format in the environmental assessment documentation, the following suggestions should help to expedite the review and approval of an environmental assessment.

The proponent should set out clearly and exactly what the undertaking is for which approval is being sought, based on the conclusions of the study. Language should be clear and simple. The proponent should aim for a document containing the amount of information necessary to make a balanced presentation. It should be relevant and to the point; sheer bulk is not in itself a virtue. It might help if detailed technical data were generally confined to appendices or background papers. A summary form (Form 1 of Regulation 836/76) of major findings and recommendations must accompany a submission. It might also be a good idea to include summaries in each major section of the report.

The document will be permanently available in the Public Record, as stipulated in Section 32 of the Act. Members of the public may request copies of all or part of any such document. For long term storage, the Ministry of the Environment is planning to microfilm the documents in the Public Record. The environmental assessment document should be reproduced on standard materials in standard sizes, for easier reproduction and handling. Metric A4 (or its nearest non-metric equivalent) is the recommended paper size.

Maps, map folios, photos and diagrams should also conform to this standard size or a simple multiple of it. Where coloured mapping is used, patterns or hatching should be done in such a way that black and white reproductions may easily be made by photo-copier and on microfilm. Consideration may have to be given by the Ministry to standardization of map scales, codes, size multiples, etc., in order to facilitate data storage and reproduction in various formats.

In order to keep to a minimum the period during which the environmental assessment is being reviewed by the Ministry of the Environment and other government agencies, it is important that the proponent submit sufficient copies for immediate distribution to all the reviewers, in order to avoid delay. The appropriate number should be determined by the proponent in consultation with the Ministry's Review Coordinator for the undertaking.

A P P E N D I X A

A P P E N D I X A
EXAMPLES OF SOME OF THE FACTORS TO BE CONSIDERED IN
ENVIRONMENTAL ASSESSMENT STUDIES

Introduction

The natural and man-made environments are made up of inter-related and interacting components. The environmental assessment study includes the identification, inventory and analysis of these components and their interrelationships, and the prediction of the potential effects on them of the various alternatives considered. Below is an outline list of some of the environmental factors to be considered; it is not to be taken as being exhaustive, and is presented purely by way of example. The factors may be expanded or rearranged in accordance with the magnitude, location and stage of the study reached. Of course, every factor will not necessarily be relevant to each undertaking.

A. NATURE (Natural Environment)

Physical Features:

- topography;
- geology (surface and subsurface) and soils: types and capability (e.g., agricultural, erodibility, stability);
- hydrology (surface and subsurface), drainage;
- water and air quality;
- climate: micro and macro.

Biological

- terrestrial and aquatic fauna and flora;
- identification of ecological systems and description of successional stage (components, interrelationships and sensitivity);
- rare/endangered, sensitive/unique faunal or floral species, community, habitat.

B. MAN (Social, Cultural and Economic),

at local, regional and provincial levels as applicable.

- Population (density and distribution), community structure;
- Local governments, institutions;
- Community infrastructure, services (e.g., housing, social services, utilities);
- Health and safety, noise;
- Land Use: existing, future, potential; controls (official plans, zoning by-laws, etc.);
- Visual and aesthetic, environmental quality;
- Cultural, historical and archaeological;
- Financial implications for proponent;
- Economics, including municipal tax structures;
- Engineering: construction, operation and maintenance.

A P P E N D I X B

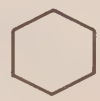
BASIC FLOW DIAGRAM OF THE ENVIRONMENTAL ASSESSMENT ACT 1975



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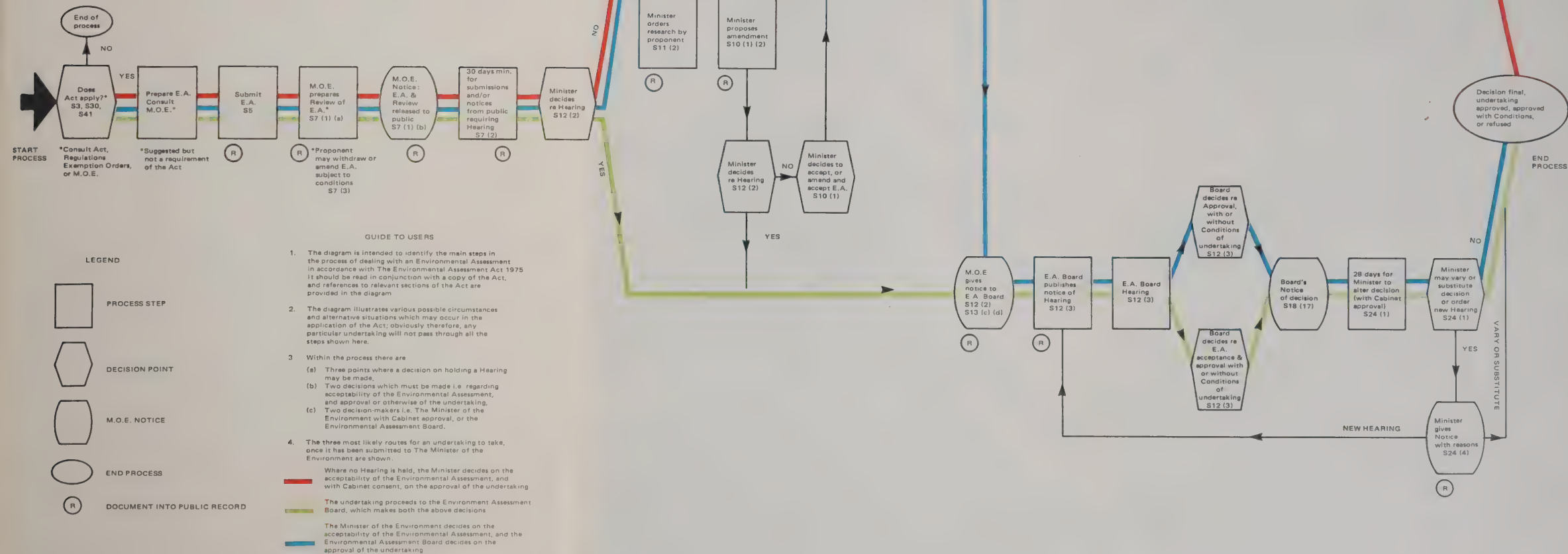
DECISION POINT



Ministry
of the
Environment
Ontario

DETAILED FLOW DIAGRAM OF THE ENVIRONMENTAL ASSESSMENT ACT, 1975

JANUARY, 1978



A P P E N D I X C



Government
of Ontario

The Environmental Assessment Act, 1975

Statutes of Ontario, 1975
Chapter 69

BILL 14

1975

The Environmental Assessment Act, 1975

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PART I

INTERPRETATION AND APPLICATION

1. In this Act,

- (a) "air" includes enclosed air;
- (b) "Board" means the Environmental Assessment Board established under Part III;
- (c) "environment" means,
 - (i) air, land or water,
 - (ii) plant and animal life, including man,
 - (iii) the social, economic and cultural conditions that influence the life of man or a community,
 - (iv) any building, structure, machine or other device or thing made by man,
 - (v) any solid, liquid, gas, odour, heat, sound, vibration or radiation resulting directly or indirectly from the activities of man, or
 - (vi) any part or combination of the foregoing and the interrelationships between any two or more of them,

in or of Ontario;

Interpretation

R.S.O. 1970,
c. 118

R.S.O. 1970,
c. 100

- (d) "environmental assessment", when used in relation to an undertaking, means an environmental assessment submitted pursuant to subsection 1 of section 5;
- (e) "land" includes enclosed land, land covered by water and subsoil;
- (f) "Minister" means the Minister of the Environment;
- (g) "Ministry" means the Ministry of the Environment;
- (h) "municipality" means the corporation of a county, metropolitan area, regional area, district area, city, town, village, township or improvement district and includes a local board as defined in *The Municipal Affairs Act* and a board, commission or other local authority exercising any power with respect to municipal affairs or purposes, including school purposes, in an unorganized township or unsurveyed territory;
- (i) "person" includes a municipality, Her Majesty in right of Ontario, a Crown agency within the meaning of *The Crown Agency Act*, a public body, a partnership, an unincorporated joint venture and an unincorporated association;
- (j) "proceed" includes "carry on";
- (k) "proponent" means a person who,
 - (i) carries out or proposes to carry out an undertaking, or
 - (ii) is the owner or person having charge, management or control of an undertaking,
- (l) "provincial officer" means a person designated by the Minister as a provincial officer under Part IV;
- (m) "public body" means a body other than a municipality that is defined as a public body by the regulations;
- (n) "regulations" means the regulations made under this Act;
- (o) "undertaking" means,

- (i) an enterprise or activity or a proposal, plan or program in respect of an enterprise or activity by or on behalf of Her Majesty in right of Ontario, by a public body or public bodies or by a municipality or municipalities, or
- (ii) a major commercial or business enterprise or activity or a proposal, plan or program in respect of a major commercial or business enterprise or activity of a person or persons other than a person or persons referred to in subclause i that is designated by the regulations;

(p) "water" means surface water and ground water, or either of them.

2. The purpose of this Act is the betterment of the people of the whole or any part of Ontario by providing for the protection, conservation and wise management in Ontario of the environment.

3. This Act applies to,

- (a) enterprises or activities or proposals, plans or programs in respect of enterprises or activities by or on behalf of Her Majesty in right of Ontario or by a public body or public bodies or by a municipality or municipalities on and after the day this Act comes into force;

- (b) only on and after a day to be named in a proclamation of the Lieutenant Governor, major commercial or business enterprises or activities or proposals, plans or programs in respect of major commercial or business enterprises or activities of a person or persons other than a person referred to in clause a, designated by the regulations.

4. This Act binds the Crown.

The Crown

PART II
ACCEPTANCE, AMENDMENT, APPROVAL

Submission of environmental assessment

5.—(1) The proponent of an undertaking to which this Act applies shall submit to the Minister an environmental assessment of the undertaking and shall not proceed with the undertaking until.

- (a) the environmental assessment has been accepted by the Minister; and
- (b) the Minister has given his approval to proceed with the undertaking.

Exception

(2) Subsection 1 does not prohibit a feasibility study, including research, or any action necessary to comply with this Act before the approval of the Minister is given to proceed with an undertaking.

Content of environmental assessment

(3) An environmental assessment submitted to the Minister pursuant to subsection 1 shall consist of,

- (a) a description of the purpose of the undertaking;
- (b) a description of and a statement of the rationale for,
 - (i) the undertaking,
 - (ii) the alternative methods of carrying out the undertaking, and
 - (iii) the alternatives to the undertaking;
- (c) a description of,

- (i) the environment that will be affected or that might reasonably be expected to be affected, directly or indirectly,
- (ii) the effects that will be caused or that might reasonably be expected to be caused to the environment, and
- (iii) the actions necessary or that may reasonably be expected to be necessary to prevent, change, mitigate or remedy the effects upon or the effects that might reasonably be expected upon the environment.

by the undertaking, the alternative methods of carrying out the undertaking and the alternatives to the undertaking; and

- (d) an evaluation of the advantages and disadvantages to the environment of the undertaking, the alternative methods of carrying out the undertaking and the alternatives to the undertaking.

6.—(1) Where a proponent is required under this Act to submit to the Minister an environmental assessment of an undertaking, ^{Where an environmental assessment is required to be issued}

- (a) a licence, permit, approval, permission or consent that is required under any statute, regulation, by-law or other requirement of the Province of Ontario, an agency thereof, a municipality or a regulatory authority, in order to proceed with the undertaking shall not be issued or granted; and

- (b) if it is intended that the Province of Ontario or any agency thereof will provide a loan, a guarantee or repayment of a loan, a grant or a subsidy with respect to the undertaking, the loan, guarantee, grant or subsidy shall not be approved, made or given,

unless,

- (c) the environmental assessment has been submitted to and accepted by the Minister; and
- (d) the Minister has given approval to proceed with the undertaking.

(2) Subsection 1 does not apply to,

- (a) a licence, permit, approval, permission or consent;
- (b) a loan, guarantee, grant or subsidy,

in relation to a feasibility study, including research, or for any action necessary to comply with this Act before the approval of the Minister is given to proceed with the undertaking.

7.—(1) Where an environmental assessment of an undertaking is submitted by a proponent to the Minister, the Minister, ^{Preparation of an environmental assessment and notice}

- (a) shall cause a review of the assessment to be prepared; and

- (b) shall give notice of,
- (i) the receipt of the assessment,
- (ii) the completion of the preparation of the review,
- (iii) the place or places where the assessment and review may be inspected, and
- (iv) such other matters as the Minister considers necessary or advisable,

to the proponent, the clerk of each municipality in which the undertaking is being or will be carried out and, in such manner as the Minister considers suitable, to the public and to such other persons as the Minister considers necessary or advisable.

- (2) Any person may inspect an environmental assessment of an undertaking and the review thereof in accordance with the terms of the notice referred to in subsection 1 and may, within thirty days of the giving of the notice or within such longer period as may be stated in the notice,

- (a) make written submissions to the Minister with respect to the undertaking, the environmental assessment and the review thereof; and
- (b) by written notice to the Minister, require a hearing by the Board with respect to the undertaking, the environmental assessment and the review thereof.

- (3) A proponent may withdraw or amend an environmental assessment at any time prior to the day on which notice is given under subsection 1 and thereafter may withdraw or amend an environmental assessment subject to such terms and conditions as the Minister may by order impose.

8. The Minister, in determining whether to accept or to amend and accept an environmental assessment shall consider the purpose of this Act, the environmental assessment submitted to him, the review thereof, the written submissions, if any, made with respect thereto, any reports required by and submitted to him, and any further review that the Minister has caused to be prepared.

9. Where a hearing is not required,

- (a) pursuant to clause a of subsection 2 of section 12; or

Inspection of environmental assessment

Withdrawal of environmental assessment

Matters to be considered by the Minister

Notice of acceptance of environmental assessment

- (b) pursuant to clause *b* of subsection 2 of section 12 after receipt of a notice pursuant to clause *b* of subsection 2 of section 7,

and the Minister, after considering the matters set out in section 8, is of the opinion that the environmental assessment is satisfactory to enable a decision to be made as to whether approval to proceed with the undertaking with respect to which the environmental assessment is submitted should or should not be given or should be given subject to terms and conditions, the Minister shall accept the assessment and give notice thereof to the proponent and in such manner as the Minister considers suitable, to any person who has made a written submission to the Minister pursuant to subsection 2 of section 7.

10.—(1) Where a hearing is not required,

- (a) pursuant to clause *a* of subsection 2 of section 12; or assessment
 (b) pursuant to clause *b* of subsection 2 of section 12
 after receipt of a notice pursuant to clause *b* of subsection 2 of section 7,

and the Minister, after considering the matters set out in section 8, is of the opinion that the environmental assessment does not comply with this Act or the regulations, is inconclusive or is otherwise unsatisfactory to enable a decision to be made as to whether approval to proceed with the undertaking with respect to which the environmental assessment is submitted should or should not be given or should be given subject to terms and conditions, the Minister shall give notice to the proponent and in such manner as the Minister considers suitable, to any person who has made a written submission to the Minister pursuant to subsection 2 of section 7 that the Minister proposes to amend the environmental assessment, together with written reasons therefor including particulars of the amendments that the Minister proposes to make to the environmental assessment and, after considering any further written submissions of the proponent and of any such person, the Minister, where a hearing is not required pursuant to clause *a* of subsection 2 of section 12 or to clause *b* of subsection 2 of section 12 after receipt of a notice pursuant to subsection 1 of section 12, shall accept or amend and accept the environmental assessment.

- (2) The Minister shall give notice of the acceptance or the amendment and acceptance of the environmental assessment pursuant to subsection 1 to the proponent, and in such

Notice of
acceptance
and
amendment
of environ-
mental
assessment

manner as the Minister considers suitable, to any person who has made a written submission to the Minister pursuant to subsection 2 of section 7, and where the assessment is amended a copy of the assessment as amended and accepted together with written reasons therefor, to the proponent.

Minister
for
research,
etc., and
reports

11.—(1) Where, before accepting an environmental assessment, the Minister is of the opinion that the environmental assessment as submitted does not comply with this Act or the regulations, is inconclusive or is otherwise unsatisfactory to enable a decision to be made as to whether approval to proceed with the undertaking with respect to which the environmental assessment is submitted should or should not be given or should be given subject to terms and conditions, the Minister shall give notice to the proponent that he proposes, by order, to require the proponent to carry out such research, investigations, studies and monitoring programs related to the undertaking in respect of which the environmental assessment is submitted as are mentioned in the notice, together with written reasons therefor.

Written
submissions

(2) The Minister, after considering any written submissions of the proponent made within fifteen days of the giving of the notice or within such longer period as may be stated in the notice, may by order require the proponent to carry out such research, investigations, studies and monitoring programs related to the undertaking in respect of which the environmental assessment is submitted and to submit such reports thereon as the Minister considers necessary.

Notice of
order

(3) The Minister shall, in such manner as the Minister considers suitable, give notice of the order to any person who has made a written submission to the Minister pursuant to subsection 2 of section 7.

Reports to
be incor-
porated in
environ-
mental
assessment

(4) Upon submission of the reports to the Minister they shall be incorporated as part of the environmental assessment and the review thereof that the Minister caused to be prepared may be revised accordingly.

Notice

12.—(1) A notice that the Minister proposes to amend an environmental assessment shall state that the proponent or any person who has made a written submission to the Minister pursuant to subsection 2 of section 7 may, by written notice delivered to the Minister within fifteen days after the giving of the notice of proposal to amend, require a hearing by the Board and the proponent or the person may so require such a hearing.

(2) The Minister, by notice in writing,

- (a) may, where he considers it advisable; or
- (b) shall, upon receipt of a notice requiring a hearing pursuant to subsection 1 or pursuant to subsection 2 of section 7, unless in his absolute discretion he considers that the requirement is frivolous or vexatious or that a hearing is unnecessary or may cause undue delay,

require the Board to hold a hearing with respect to,

- (c) the acceptance or amendment and acceptance of the environmental assessment;
- (d) whether approval to proceed with the undertaking in respect of which the environmental assessment was submitted should or should not be given; and
- (e) whether the approval mentioned in clause *d* should be given subject to terms and conditions and, if so, the provisions of such terms and conditions.

(3) Upon receipt from the Minister of a notice pursuant to subsection 2, section 13 or clause *c* of subsection 1 of section 24, the Board shall appoint a time for the hearing, shall give reasonable notice thereof to the proponent and to the Minister and in such manner as the Minister may direct, notice to the public, to any person who has made a written submission to the Minister pursuant to subsection 2 of section 7 and to such other persons as the Minister considers necessary or advisable, and such other notice as the Board considers proper, and shall hold the hearing and decide the matters referred to it in the notice of the Minister.

(4) The parties to any proceedings before the Board in respect of the undertaking are,

- (a) the proponent;
- (b) any person, other than the Minister, who has required the hearing; and
- (c) such other persons as,
 - (i) the Board, in its opinion, specifies have an interest in the proceedings, and
 - (ii) the Board, having regard to the purpose of this Act, may specify.

Other hearings

13. Where an environmental assessment has been accepted or amended and accepted, and no hearing has been held pursuant to section 12, the proponent or a person who has made a written submission pursuant to subsection 2 of section 7 may, by written notice delivered to the Minister within fifteen days after the giving of the notice mentioned in section 9 or the notice mentioned in subsection 2 of section 10, require a hearing by the Board with respect to,

- (a) whether approval to proceed with the undertaking in respect of which the environmental assessment was submitted should or should not be given; and
- (b) whether the approval mentioned in clause *a* should be given subject to terms and conditions and, if so, the provisions of such terms and conditions, and

the Minister, by notice in writing,

- (c) may, where he considers it advisable; or
- (d) shall, upon receipt of any such notice requiring a hearing, unless in his absolute discretion he considers that the requirement is frivolous or vexatious or that a hearing is unnecessary or may cause undue delay,

require the Board to hold a hearing.

Approval to proceed

14.—(1) Where the Minister has accepted an environmental assessment of an undertaking, the Minister may, with the approval of the Lieutenant Governor in Council or of such Ministers of the Crown as the Lieutenant Governor in Council may designate,

- (a) give approval to proceed with the undertaking;
- (b) give approval to proceed with the undertaking subject to such terms and conditions as the Minister considers necessary to carry out the purpose of this Act and in particular requiring or specifying,
 - (i) the methods and phasing of the carrying out of the undertaking,

Hearing

- (ii) the works or actions to prevent, mitigate or remedy effects of the undertaking on the environment,
- (iii) such research, investigations, studies and monitoring programs related to the undertaking, and reports thereof, as he considers necessary,
- (iv) such changes in the undertaking as he considers necessary,
- (v) that the proponent enter into one or more agreements related to the undertaking with any person with respect to such matters as the Minister considers necessary,
- (vi) that the proponent comply with all or any of the provisions of the environmental assessment as accepted by the Minister that may be incorporated by reference in the approval,
- (vii) the period of time during which the undertaking, or any part thereof, shall be commenced or carried out; or
- (c) refuse to give approval to proceed with the undertaking.

(2) In determining whether to give approval, give approval subject to terms and conditions or refuse to give approval to proceed with an undertaking in accordance with subsection 1, the Minister shall consider,

- (a) the purpose of this Act;
- (b) the environmental assessment of the undertaking as accepted by the Minister;
- (c) the submissions, if any, made to the Minister with respect to the environmental assessment.

(3) The Minister shall give notice, together with written reasons therefor, of his approval, approval subject to terms and conditions or refusal to give approval to proceed with the undertaking to the proponent, and in such manner as

the Minister considers suitable, to any person who has made a written submission to the Minister pursuant to subsection 2 of section 7 and to such other persons as the Minister considers necessary or advisable.

15. An approval by the Minister pursuant to this Act to proceed with an undertaking does not preclude any proceeding in relation to a contravention of any provision of *The Environmental Protection Act, 1971*, *The Ontario Water Resources Act* or the regulations made under either of those Acts.

16.—(1) No person shall proceed with an undertaking contrary to any term or condition imposed by the Minister in giving approval to proceed with the undertaking.

(2) No person shall give, make, issue, interpret or apply any licence, permit, approval, permission, consent, loan, guarantee of repayment of a loan, grant or subsidy that is required in order to proceed with an undertaking contrary to any term or condition imposed by the Minister in giving approval to proceed with the undertaking.

17. Where a proponent of an undertaking proposes to make a change in the undertaking,

- (a) before the Minister has given approval to proceed with the undertaking, that does not conform to the environmental assessment of the undertaking as accepted by the Minister; or
- (b) after the Minister has given approval to proceed with the undertaking, that does not conform to any term or condition imposed upon the approval to proceed with the undertaking,

this Act applies to the proposal to make the change in the undertaking as though the proposed change were itself an undertaking to which this Act applies.

PART III

ENVIRONMENTAL ASSESSMENT BOARD

18.—(1) A board to be known as the Environmental Assessment Board is established and shall be composed of not fewer than five persons who shall be appointed by the Lieutenant Governor in Council and shall not be employed in the public service of Ontario in the employ of any ministry.

Proceedings under other Acts

1971, c. 86
R.S.O. 1970,
c. 332

Effect of approval

Idem

Where proponent proposes to change undertaking

Composition of Board

Notice of approval

(2) The Lieutenant Governor in Council shall designate a Chairman and one or more vice-chairmen from among the chairman and members of the Board.

(3) In the case of the absence or inability to act of the chairman or of there being a vacancy in the office of the chairman, a vice-chairman shall act as and have all the powers of the chairman and, in the absence of the chairman and vice-chairman or vice-chairmen from any meeting of the Board, the members of the Board present at the meeting shall appoint an acting chairman who shall act as and have all the powers of the chairman during the meeting.

(4) The members of the Board, other than the chairman, shall be appointed for a term of one, two or three years so that as nearly as possible one-third of the members, other than the chairman, shall retire each year.

(5) The chairman of the Board shall be appointed to hold office during pleasure.

(6) Every vacancy on the Board caused by the death, resignation or incapacity of a member may be filled by the appointment by the Lieutenant Governor in Council of a person to hold office for the remainder of the term of such member.

(7) Three members of the Board constitute a quorum.

(8) Such employees as are necessary to carry out the duties of the Board shall be appointed under *The Public Service Act*, R.S.O. 1970, c. 386.

(9) The Board may appoint from time to time one or more persons having technical or special knowledge of any matter to inquire into and report to the Board and to assist the Board in any capacity in respect of any matter before it.

(10) The members of the Board shall be paid such remuneration and expenses as are determined by the Lieutenant Governor in Council.

(11) The powers of the Board shall be exercised by resolution and the Board may pass resolutions governing the calling of the proceedings at meetings and specifying the powers and duties of employees of the Board and generally dealing with the carrying out of its function.

(12) The Board may determine its own practice and procedure in relation to hearings and may, subject to procedure section 28 of *The Statutory Powers Procedure Act*, 1971, c. 47

the approval of the Lieutenant Governor in Council, make rules governing such practice and procedure and the exercise of its powers in relation thereto and prescribe such forms as are considered advisable.

(13) The chairman may, in writing, authorize less than a quorum of the Board to conduct a hearing and the member or members conducting the hearing shall have all the powers of the Board for the purposes of the hearing.

(14) No member of the Board shall participate in a decision of the Board pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision of the Board shall be given unless all members so present participate in the decision.

(15) For the purpose of proceedings before the Board, the Board may appoint from among a class of parties to the proceedings having, in the opinion of the Board, a common interest, a person to represent that class in the proceedings, but any other member of the class for which such appointment was made may, with the consent of the Board, take part in the proceedings notwithstanding the appointment.

(16) The Minister is entitled, by counsel or otherwise, to take part in proceedings before the Board.

(17) The Board shall give a copy of its decision together with written reasons therefor to the Minister, to the parties, or where an appointment has been made pursuant to subsection 15, to the appointee on behalf of the class, and to such other persons as have made written submissions pursuant to subsection 2 of section 7 and to the clerk of each municipality in which the undertaking is being or will be carried out.

(18) No decision of the Board is effective until it becomes final pursuant to section 24.

(19) No decision, order, direction, resolution or ruling of the Board shall be questioned or reviewed in any court and no proceeding shall be taken in any court by way of injunction, declaratory judgment, *certiorari*, *mandamus*, prohibition, application for judicial review, *quo warranto*, or otherwise to question, review, prohibit or restrain the Board or any of its decisions, orders, directions, resolutions or rulings.

(20) Except as otherwise provided in this Act, *The Statutory Powers Procedure Act*, 1971 applies to the proceedings of the Board.

Conduct of hearing by less than quorum

Only members at hearing to participate in decision

Board may appoint class representative

Minister entitled to take part in proceedings

Giving of decision

Decisions, Board not subject to review

When decision is effective

Application of 1971, c. 47

19. A hearing conducted by the Board or a member or members of the Board shall be open to the public except where the Board or the member or members of the Board conducting the hearing is or are of the opinion that matters may be disclosed at the hearing that are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public, in which case, the Board or the member or members of the Board conducting the hearing may hold the hearing concerning any such matters *in camera*.

20. Any decision of the Board that becomes final pursuant to section 24 shall be deemed to be the decision of the Minister or of the Minister with the approval required by section 14.

21. No member, employee or appointee of the Board shall be required to give testimony in any proceeding with regard to information obtained by him in the discharge of his duties as a member, employee or appointee of the Board.

22. Where the Environmental Hearing Board, established under *The Ontario Water Resources Act*, proposed to hold or commenced but did not complete a public hearing or did not report thereon under *The Ontario Water Resources Act* 1971, c. 86 or *The Environmental Protection Act*, 1971, immediately before this section came into force, the hearing shall be held or continued or the report may be made by the Environmental Assessment Board or, where it is necessary or advisable in the opinion of the chairman of the Environmental Assessment Board, the Environmental Assessment Board may hold a fresh hearing and any action or notice taken or given by the Environmental Hearing Board shall be deemed to have been taken or given by the Environmental Assessment Board.

23. For purposes relevant to the subject-matter of a hearing, the Board, its employees and appointees may enter and inspect any land or premises other than a dwelling at any reasonable time.

24.—(1) Within twenty-eight days after receipt by the Minister of a decision of the Board on any matter referred to it by notice of the Minister pursuant to subsection 2 of section 12 or section 13 or made pursuant to clause *c*, or within such longer period as may be determined by the

Minister within such twenty-eight day period, the Minister, with the approval of the Lieutenant Governor in Council or such Ministers of the Crown as the Lieutenant Governor in Council may designate, may,

- (a) vary the whole or any part of the decision;
- (b) substitute for the decision of the Board, such decision as he considers appropriate; or
- (c) by notice to the Board require the Board to hold a new hearing of the whole or any part of the matter referred to the Board by the notice of the Minister and reconsider its decision.

(2) Subject to subsection 3, a decision of the Board is final after the expiration of the period or periods mentioned in subsection 1 unless, pursuant to subsection 1, the decision is varied or a decision is substituted for the decision of the Board or a new hearing is required.

(3) A decision of the Board that has been varied pursuant to clause *a* or a decision that has been substituted for the decision of the Board pursuant to clause *b* of subsection 1, is final.

(4) The Minister shall give notice, together with written reasons therefor, of any variation, substitution or requirement of a new hearing pursuant to subsection 1, to every person entitled to receive a copy of the decision of the Board pursuant to subsection 17 of section 18.

PART IV

PROVINCIAL OFFICERS

25.—(1) The Minister may designate in writing one or more employees of the Ministry or other persons as provincial officers for the purposes of any section or Part of this Act or any regulation or section of any regulation made under this Act that is referred to in the designation and in a designation may limit the authority of a provincial officer in such manner as the Minister considers necessary or advisable.

(2) The Minister shall issue to every provincial officer a certificate of his designation and every provincial officer, in the execution of his duties under this Act and the regulations, shall produce his certificate of designation upon request.

26.—(1) Where a provincial officer has reasonable grounds for believing that it is necessary, for the purpose of the administration of this Act and the regulations, he may, upon production of his certificate of designation, enter at any reasonable time any building, other than a dwelling, or any structure, machine, vehicle, land, water or air and make or require to be made such surveys, examinations, investigations, tests and inquiries, as he considers necessary for such purpose, including examinations of books, records and documents and may make, take and remove or may require to be made, taken or removed samples, copies or extracts.

(2) Where a provincial judge is satisfied, upon an *ex parte* application by a provincial officer, that there is reasonable ground for believing that it is necessary to enter any building, including a dwelling, structure, machine, vehicle, land, water or air for the administration of this Act or the regulations, the provincial judge may issue an order authorizing a provincial officer to enter therein or thereon and to make or require to be made such surveys, examinations, investigations, tests and inquiries and to take the other actions mentioned in subsection 1 but every such entry, survey, examination, investigation, test, inquiry and other such action shall be made or taken between sunrise and sunset unless the provincial judge authorizes the provincial officer, by the order, to so act at another time.

27. No person shall hinder or obstruct a provincial officer in the lawful performance of his duties or knowingly furnish a provincial officer with false information or refuse to furnish him with information required for the purposes of this Act and the regulations.

28.—(1) Every provincial officer shall preserve secret^{Matters confidential} in respect of all matters that come to his knowledge in the course of any survey, examination, test or inquiry under this Act or the regulations and shall not communicate any such matter to any person except,

- (a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations;
- (b) to his counsel; or
- (c) with the consent of the person to whom the information relates.

(2) Except in a proceeding under this Act or the regulations, no provincial officer shall be required to give testimony in any civil suit or proceeding with regard to

information obtained by him in the course of any survey, examination, test or inquiry under this Act or the regulations.

PART V

ADMINISTRATION

29. The Minister, in addition to any other remedy and to any penalty imposed by law, may apply to the Divisional Court for an order,

- (a) enjoining any act to proceed with an undertaking contrary to this Act; or
- (b) invalidating any licence, permit, approval, permission or consent issued or granted contrary to subsection 1 of section 6,

and the court may make the order on such terms and conditions as the court considers proper.

Exemption

30. Where the Minister is of the opinion that it is in the public interest, having regard to the purpose of this Act and weighing the same against the injury, damage or interference that might be caused to any person or property by the application of this Act to any undertaking, the Minister, with approval of the Lieutenant Governor in Council or of such Ministers of the Crown as the Lieutenant Governor in Council may designate, may by order,

- (a) exempt the undertaking or the proponent of the undertaking from the application of this Act or the regulations or any matter or matters provided for in this Act or the regulations subject to such terms and conditions as the Minister may impose;
- (b) suspend or revoke an exemption referred to in clause a;
- (c) alter or revoke any term or condition of an exemption referred to in clause a.

Disclosure

31. Notwithstanding any other provision of this Act, where the Minister is of the opinion that compliance with any provision of this Act is causing, will cause or will likely cause the disclosure of matters that are of such a nature that the desirability of avoiding disclosure thereof in the interest of any person affected or in the public interest outweighs the desirability of disclosing such matters to the public, the Minister may make such order for the protection of such person or the public interest as he considers necessary or advisable.

32.—(1) The Minister shall cause to be maintained a Record of every undertaking in respect of which an environmental assessment has been submitted under this Act that, subject to any order of the Minister pursuant to section 31, shall consist of the environmental assessment, the review of the environmental assessment that the Minister caused to be prepared, any written submissions, any decision of the Board or the Minister together with written reasons therefor, if any, made under this Act, any notice under section 9, subsection 2 of section 10, subsection 3 of section 14, subsection 4 of section 24 and section 39 and any order of the Minister pursuant to this Act together with the written reasons, if any, therefor.

(2) The Minister shall, upon the request of any person, Inspection make available for the inspection of such person any record referred to in subsection 1 including any document forming part of the record as soon as practicable after issuance or receipt of the document.

33. The Minister, for the purposes of the administration Powers and enforcement of this Act and the regulations may, Minister

- (a) conduct research with respect to the environment or environmental assessments;
- (b) conduct studies of the quality of the environment;
- (c) conduct studies of environmental planning or environmental assessments designed to lead to the wise use of the environment by man;
- (d) convene conferences and conduct seminars and educational and training programs with respect to the environment or environmental assessments;
- (e) gather, publish and disseminate information with respect to the environment or environmental assessments;
- (f) make grants and loans for research or the training of persons with respect to the environment or environmental assessments in such amounts and upon such terms and conditions as the Minister, subject to the approval of the Lieutenant Governor in Council, may determine;
- (g) appoint committees to perform such advisory functions as the Minister considers advisable;
- (h) make such investigations, surveys, examinations, tests and other arrangements as he considers necessary; and

- (i) with the approval of the Lieutenant Governor in Council, enter into an agreement with any government or person with respect to the environment or environmental assessments.

34.—(1) Except in the case of an application for judicial review or an action or proceeding that is specifically provided for with respect to a person referred to in this subsection in any Act or in a regulation under this or any other Act, no action or other proceeding for damages or otherwise lies or shall be instituted against an employee of the Ministry, a member of the Board or a Crown employee within the meaning of *The Public Service Act* who is a provincial officer or is acting under the direction of an employee of the Ministry, or such member or provincial officer, for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any such duty or authority.

(2) Subsection 1 does not, by reason of subsections 2 and 4 of section 5 of *The Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by an agent or servant of the Crown to which it would otherwise be subject and the Crown is liable under that Act for any such tort in a like manner as if subsection 1 had not been enacted.

35. Where a proponent is required under this Act not to proceed with an undertaking until an environmental assessment of the undertaking has been accepted by the Minister and a public hearing is required or permitted under *The Environmental Protection Act, 1971* or *The Ontario Water Resources Act* other than by the Environmental Appeal Board or the Ontario Municipal Board with respect to the undertaking, the Minister shall order,

- (a) that the public hearing under such other Act may be proceeded with and that this Act or the regulations or any matter or matters provided for in this Act or the regulations that is specified in the order does not apply to the undertaking or proponent; or
- (b) that this Act applies to the undertaking and proponent and the public hearing under such other Act shall be deemed not to be required or permitted.

36. No person shall knowingly give false information in any application, return or statement made to the Minister, the Board, an employee or appointee of the

Protection
from
personal
liability

R.S.O. 1970,
c. 386

Crown not
liable for
liability
R.S.O. 1970,
c. 365

Hearings
before
other
Acts

1971, c. 86
R.S.O. 1970,
c. 332

False
information

Board, a provincial officer or any employee of the Ministry in respect of any matter under this Act or the regulations.

37. In any prosecution, proceeding or hearing under this Act or the regulations, the production of,

- (a) a certificate or report of an analyst in the employ of the Crown in right of Ontario designated by the Minister as to the analysis, ingredients, quality, quantity or temperature of any material, whether solid, liquid or gas or any combination of them; or
- (b) any document under this Act purporting to be signed by the Minister or by or for the Board, or any certified copy thereof.

is *prima facie* evidence of the facts stated therein and of the authority of the person making the document without any proof of appointment or signature.

38.—(1) Any notice, order, approval or other document under this Act or the regulations is sufficiently given or served if delivered personally or sent by registered mail addressed to the person to whom delivery or service is to be made at the latest address appearing on the records of the Ministry.

(2) A notice,

- (a) given by the Minister pursuant to section 9, section 10 or subsection 3 of section 14;
- (b) given by the Board pursuant to subsection 3 of section 12; or
- (c) of the order of the Minister pursuant to section 11,

shall be given to the clerk of each municipality in which the undertaking is being or will be carried out.

(3) Where notice is given or service is made by registered mail, the giving or service shall be deemed to be made on the seventh day after the day of mailing unless the person to whom notice is given or on whom service is being made establishes that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control, receive the notice, order, approval or other document until a later date.

Public
notice

(4) Where the Minister or the Board is of the opinion that because the persons who are to be given any notice or document under this Act are so numerous, or for any other reason it is impracticable to give the notice or document to all or any of the persons individually, the Minister or the Board, as the case may be, may instead of doing so, cause the notice or reasonable notice of the contents of the document to be given to the persons by public advertisement or otherwise as the Minister or the Board may direct, and the date on which such notice or reasonable notice of the contents of the document is first published or otherwise given as directed, shall be deemed to be the date on which the notice or document is given.

Inspection of
documents

(5) The making available by the Minister of a copy or reproduction made by any means of a document is compliance with the provisions of this Act authorizing the inspection of the document.

Destruction
of certain
documents

(6) Notwithstanding any provision of this Act, a document may be destroyed by or under the authority of the Minister when it has been completely recorded or copied and the recording or copy is retained for the purpose of inspection under this section.

Where
notice
is to be
given to
Minister

39. Where a proponent of an undertaking in respect of which an environmental assessment has been accepted by the Minister and for which approval to proceed has been given by the Minister receives notice of any fact, situation, event, order, proceeding or application the result of which or compliance with which has affected, affects or may affect the ability of the proponent to proceed with the undertaking in accordance with any term or condition to which the approval of the Minister to proceed with the undertaking is subject, the proponent shall forthwith give notice thereof to the Minister.

Offence

40. Every person, whether as principal or agent, or an employee of either of them, who contravenes any provision of this Act or the regulations or fails to comply with an order or a term or condition of an approval issued or given under this Act is guilty of an offence and on summary conviction is liable on a first conviction to a fine of not more than \$5,000 and on a subsequent conviction to a fine of not more than \$10,000 for every day or part thereof upon which the offence occurs or continues.

PART VI

REGULATIONS

41. The Lieutenant Governor in Council may make regulations,

- (a) defining any enterprise or activity as a major commercial or business enterprise or activity;
- (b) defining enterprises or activities as classes of major commercial or business enterprises or activities;
- (c) defining any body other than a municipality as a public body;
- (d) designating any major commercial or business enterprise or activity or class of major commercial or business enterprises or activities as an undertaking or class of undertakings to which this Act applies;
- (e) designating any proposal, plan or program or any class of proposals, plans or programs in respect of any major commercial or business enterprise or activity or any class of major commercial or business enterprises or activities as an undertaking or class of undertakings to which this Act applies;
- (f) exempting any person, class of persons, undertaking or class of undertakings from the provisions of this Act, the regulations or any section or part of a section thereof and designating any enterprise or activity or class of enterprises or activities or any proposal, plan or program or any class of proposals, plans or programs in respect of any of them by or on behalf of Her Majesty in right of Ontario, by a public body or public bodies or by a municipality or municipalities as an undertaking or class of undertakings to which this Act applies notwithstanding any exemption under this clause;
- (g) prescribing additional information that shall be contained in environmental assessments submitted to the Minister;
- (h) prescribing forms for the purposes of this Act and providing for their use.

42. A class of undertakings under this Act or the regulations may be defined with respect to any attribute, quality or

Class of undertakings

or characteristic or combination thereof and may be defined to include any number of undertakings under one ownership or more than one ownership and whether or not of the same type or with the same attributes, qualities or characteristics.

43. Any regulation may be general or particular in its application, may be limited as to time or place or both and may exclude any place from the application of the regulation.

Scope of regulations

44. Any regulation may adopt by reference, in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any code, formula, standard or procedure, and may require compliance with any code, standard or procedure so adopted.

Adoption of codes in regulations

45.—(1) A regulation is not effective with respect to an enterprise or activity that is commenced before the regulation comes into force.

Application of regulations

(2) Notwithstanding subsection 1, a regulation is effective with respect to,

Idem

(a) any major commercial or business enterprise or activity that is commenced after the coming into force of this Act and that is being carried on or is not completed when the regulation comes into force;

(b) a significant change made in any major commercial or business enterprise or activity after the coming into force of this Act and that is being carried on or is not completed before the regulation comes into force; or

(c) any proposal, plan or program in respect of any major commercial or business enterprise or activity or any class of major commercial or business enterprises or activities proposed or made before the coming into force of the regulation whether the proposal, plan or program is proposed or made before or after the coming into force of this Act.

Idem

(3) Notwithstanding subsection 1, a regulation made under clause f of section 41 is effective whether the enterprise or activity, or class of enterprises or activities, or proposal, plan or program or class of proposals, plans or programs in respect of any of them is commenced, carried on, made or proposed before or after the coming into force of this Act.

PART VII

MISCELLANEOUS

46. This Act comes into force on a day to be named by Commencement proclamation of the Lieutenant Governor.

47. This Act may be cited as *The Environmental Assess. Short title ment Act, 1975*.

